

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16891
[Redacted]	)	
Petitioners.	)	DECISION
	)	
	)	

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On July 25, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of \$510.

On August 19, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather submitted additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the taxpayers sold real property in Idaho in 1998. The Bureau researched the Tax Commission's records and found the taxpayers did not file an Idaho individual income tax return for the taxable year 1998. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayers a letter asking the taxpayers about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers responded stating that they were [Redacted] residents when the property in Idaho sold and that they were told any income received from the sale was [Redacted] income. They stated taxes were paid to the state of [Redacted]. The taxpayers also sent the Bureau a copy of their 1998 federal and [Redacted]

returns. The taxpayers asked that any penalties associated with the 1998 income tax audit be waived as they acted in good faith when paying the tax on the sale of the property.

The Bureau reviewed the information the taxpayers provided and determined the taxpayers were required to file an Idaho income tax return. The Bureau prepared a return for the taxpayers and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination. The taxpayers stated they paid the tax to [Redacted] and it was their understanding that they did not owe any tax to Idaho. The taxpayers stated the Bureau did not give them a credit for the taxes paid to [Redacted]. The taxpayers asked the Tax Commission to waive the penalties and interest because Idaho did not notify them in a timely manner.

The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers responded that they wanted a written decision. They also provided additional information for the Tax Commission to consider. Therefore, the Tax Commission decided the matter based upon the information provided.

The facts show and the taxpayers do not dispute that there was a sale of property in Idaho. Therefore, if the taxpayers realized a gain on the sale, the gain is considered Idaho source income. Idaho Code section 63-3026A(3)(ii). If the proceeds from the sale were in excess of the filing requirement provided for in Idaho Code section 63-3030, the taxpayers were required to file an Idaho income tax return.

The information available shows the taxpayers sold the Idaho property for \$65,000 and had a gain on the sale of \$31,003. These amounts exceed the filing requirements of Idaho Code section 63-3030; therefore, the taxpayers were required to file an Idaho income tax return. The return the Bureau prepared for the taxpayers started with the gain on the sale (Idaho source

income), subtracted the Idaho capital gains deduction (the property was held over 18 months), and prorated the taxpayers' standard deduction and exemptions (Idaho Code section 63-3026A).

The Tax Commission found the computation correct and in accordance with the Idaho Code.

The taxpayers argued that the Bureau did not give them credit for taxes paid to [Redacted] on the sale of the property. However, Idaho Code section 63-3029 states in pertinent part,

A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, . . . for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

Therefore, for Idaho to give the taxpayers a credit for taxes paid to [Redacted], the taxpayers must be domiciled in or residents of Idaho. Generally, the credit the taxpayers seek is granted by the taxpayer's state of residence or domicile. Since the taxpayers were residents and domiciled in [Redacted], the credit should be claimed on their California return.

The taxpayers stated they were told that they were not required to report the sale to Idaho and that they were only required to file a return with [Redacted]. The taxpayers did not identify who told them they were not required to file a return with Idaho. The taxpayers also did not provide the facts that elicited such a response to them. Consequently, the Tax Commission can only rule on what is stated in the Idaho Code; that is, the sale of property in Idaho is Idaho source income. Idaho Code section 63-3026A(3)(ii).

The taxpayers stated they were given misinformation, but from whom is unknown. The taxpayers did not raise estoppel as an issue, but it is somewhat implied by their statement of the information they were given. Although it is unfortunate the taxpayers received incorrect information, the courts have determined the government is not estopped from collecting tax

because of mistakes or misinformation by its agents, officers, or employees. Adams v. Williams, 90 Idaho 195, 409 P.2d 415. Regardless of whether the taxpayers were given the incorrect information from the state of [Redacted], a tax preparer, or Idaho State Tax Commission employees, the Tax Commission is not barred from collecting the tax in this matter.

The taxpayers stated the Tax Commission failed to act in a responsible manner. They said the Tax Commission did not notify them in a timely manner that tax was owed to Idaho. It is the taxpayers' responsibility to file Idaho income tax returns. Each taxpayer has the responsibility to become familiar with the taxing schemes of the states where he has taxable activities. Granted, the taxpayers in this case were given incorrect information about their requirement to file an Idaho income tax return, but this does not hasten or place any further requirement on the Tax Commission to identify the taxpayers as potential audit candidates.

In fulfilling its charge and duties (Idaho Code section 63-105), the Tax Commission makes every effort to review and analyze all the information it receives in a timely manner. Ideally, the Tax Commission would like to notify taxpayers of any tax deficiencies shortly after the end of the filing season. However, with the volume of information, the timing of receiving the information, the available technology, and the available staff, it is just not possible.

The taxpayers stated the Tax Commission was in violation of its own laws by not notifying them within 14 days of the date they protested the Notice of Deficiency Determination. The taxpayers mailed their protest letter August 19, 2002. The Tax Commission did not acknowledge the taxpayers' protest until September 24, 2002. From the information the taxpayers provided, it is clear the Tax Commission received the taxpayers' protest letter on August 22, 2002. However, the Bureau never received the letter until the taxpayers provided the

Bureau with a faxed copy on September 20, 2002. The Tax Commission is at a loss to explain what happened to the taxpayers' original protest letter.

The taxpayers were correct that the Tax Commission did not meet the requirements of the law as set out in Idaho Code section 63-3045B(3). The Board of Tax Appeals (Board) addressed this in its decision of Hagler v. State Tax Commission, Idaho Board of Tax Appeals, 99-B-857. The issue was the lack of jurisdiction because the Tax Commission was 13 days late in mailing the acknowledgment letter. The Board stated, "The procedural or clerical problem associated with this issue was properly classified in the nature of 'harmless error' by the Tax Commission . . ." Therefore, since the taxpayers' right to appeal was preserved and no harm came to the taxpayers, the Tax Commission finds that missing the 14-day acknowledgment is a harmless error.

The Bureau added interest and penalty to the taxpayer's return per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found the addition of interest proper and in accordance with the Idaho Code. However, as for the penalty, the Tax Commission found that the taxpayers had reasonable cause for the position they took. Therefore, the Tax Commission waives the addition of the penalty.

WHEREFORE, the Notice of Deficiency Determination dated July 25, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$337	\$ 0	\$99	\$436

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]

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